



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 12, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-1205

Dear Ms. Wiegman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Texas Open Records Act. Your request was assigned ID# 114781.

The Texas Department of Health (the "department") received a request for "a complete report, audit, evaluation and any investigation" that was conducted concerning Patient First Home Health Nursing Service, Inc. You submitted to this office for review documents responsive to the request, which you contend are confidential in their entirety under section 142.009(d) of the Health and Safety Code.¹ Section 142.009(c) provides that the department must investigate "each complaint received regarding the provision of home health, hospice, or personal assistance services." Section 142.009(d) provides as follows:

The reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

(1) to a state or federal agency;

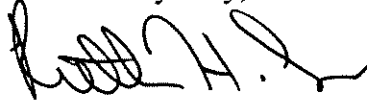
¹We note that you did not timely submit a request for a decision to this office. Gov't Code § 552.301 (governmental body must seek decision from attorney general within ten days of receipt of public records request). When a governmental body does not timely seek a decision, the requested information is presumed to be public. Gov't Code § 552.302. This presumption of openness can be overcome by showing that the records are made confidential by another source of law. In this situation, you have overcome the presumption of openness by asserting that section 142.009 of the Health and Safety Code makes these records confidential.

- (2) to federal, state, or local law enforcement personnel:
- (3) with the consent of each person identified in the information released;
- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule; or
- (5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency.

The information submitted to this office are reports, records, and working papers that were used or developed during the investigation. Based upon our understanding that there has been no consent for release and that no other exception to disclosure is applicable, we agree that the submitted documents are confidential in their entirety under section 142.009(d).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 114781

Enclosures: Submitted documents

cc: Ms. Ricki Baker
1503 E. Avenue
Wellington, Texas 79095
(w/o enclosures)